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MT LEGISLATIVE HISTORY

Chapter 559 1987

Bill H 748 S _____ Original bill & hist. X C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
_____	___C	_____	___C
2/19	✓C	3/25	✓C
_____	___C	_____	___C
Date Out 2/23	✓C	3/26	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HOUSE BILL NO. 748

INTRODUCED BY RAMIREZ, THAYER, D. BROWN, HALLIGAN, SPAETH, NEUMAN, MAZUREK, HOLLIDAY, GRADY, WINSLOW, QUILICI, KEATING, MARKS

BY REQUEST OF THE SECRETARY OF STATE

IN THE HOUSE

FEBRUARY 14, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 24, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
	PRINTING REPORT.
	SECOND READING, DO PASS.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, PASSED. AYES, 96; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 2, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 30, 1987	SECOND READING, CONCURRED IN.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY.
	THIRD READING, CONCURRED IN. AYES, 50; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 8, 1987	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 9, 1987	THIRD READING, AMENDMENTS CONCURRED IN.
	SENT TO ENROLLING.

House BILL NO. 748

INTRODUCED BY Ramirez, Rehberg, Daw, Brown, Hollen, Smith, Hellikson, BY REQUEST OF THE SECRETARY OF STATE, Jayne, Brady, Wanzenried, Zook, Keating, Mark

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A CORPORATION IN ITS ARTICLES OF INCORPORATION TO ELIMINATE OR LIMIT A DIRECTOR'S PERSONAL LIABILITY TO THE CORPORATION OR ITS SHAREHOLDERS FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY DUTY AS A DIRECTOR; AMENDING SECTION 35-1-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-1-202, MCA, is amended to read:

"35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized, which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter;

(d) the aggregate number of shares which the corporation shall have authority to issue and, if such shares are to be divided into classes, the number of shares of each class;

(e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional shares of the corporation;

(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(i) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

(j) the name and address of each incorporator.

INTRODUCED BILL
HB 748

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) the direction of the management of the business and the regulation of the affairs of the corporation;

(b) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(c) the par value of any authorized shares or class of shares;

(d) any provision that, under this chapter, is required or permitted to be set forth in the bylaws.;

(e) the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:

(i) for a breach of a director's duty of loyalty to a corporation or its shareholders;

(ii) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law;

(iii) under 35-1-409; or

(iv) for a transaction from which a director derives an improper personal benefit. A provision under this subsection may not eliminate or limit the liability of a director for

an act or omission occurring before the effective date of the provision. For purposes of this subsection, "director" includes a member of a governing body of a corporation that is not authorized to issue capital stock.

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter."

NEW SECTION. Section 2. Effective date. This act is effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

March 27 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 748

Third reading copy (blue color)

Allow Corporations to limit directors' liability.
Ramirez (Thayer)

Respectfully report as follows: That HOUSE BILL No. 748

1. Title, line 5.
Following: "CORPORATION"
Insert: "OR ASSOCIATION"

2. Title, line 7.
Following: "CORPORATION"
Insert: ", ASSOCIATION,"
Strike: "ITS"

3. Title, line 8.
Following: "SHAREHOLDERS"
Insert: "OF THE CORPORATION OR MEMBERS OF THE ASSOCIATION"

4. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "35-1-202,"
Insert: "35-2-202, 35-15-201, 35-16-202, 35-17-202, 35-18-203, AND ~~AND~~ 35-20-103,"

5. Page 4, line 8.
Following: line 7
Insert: "Section 2. Section 35-2-202, MCA, is amended to read:
"35-2-202. Articles of incorporation -- control over

~~XXXXXX~~

~~XXXXXXXXXX~~ CONTINUED

Senator Mazurek Chairman.

3-3

bylaws. (1) The articles of incorporation shall set forth:
(a) the name of the corporation;
(b) the period of duration, which may be perpetual;
(c) the purpose or purposes for which the corporation is organized;
(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;
(e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;
(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
(g) the name and address of each incorporator.
(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).
~~(2)~~ (3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.
~~(3)~~ (4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 3. Section 35-15-201, MCA, is amended to read:
"35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:
(a) the name of the proposed corporation;
(b) its capital stock;
(c) its location;

CONTINUED

Senator Mazurek

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(d) the duration of the association; and

(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20."

Section 4. Section 35-16-202, MCA, is amended to read:

"35-16-202. Petition for incorporation -- contents and filing -- bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

CONTINUED

3-27-87

Senator Mazurek

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

~~(3)~~ (4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition."

Section 5. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified

CONTINUED

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Senator Mazurek

copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

Section 6. Section 35-18-203, MCA, is amended to read:
"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:
(a) the name of the cooperative;
(b) the address of its principal office;
(c) the names and addresses of the incorporators;
(d) the names and addresses of the persons who shall constitute its first board of trustees; and
(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.
(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).
~~(2)~~ (3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.
~~(3)~~ (4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 7. Section 35-20-103, MCA, is amended to read:
"35-20-103. Document of incorporation -- contents -- filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:
(a) the names of the associates who attended such meeting;
(b) the corporate name of the association determined upon by a majority of the persons who met;
(c) the number of persons fixed upon to manage the concerns of the association;
(d) the names of the trustees chosen at the meeting and their classification;

CONTINUED

Senator Mazurek

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.
(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).
~~(2)~~ (3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.""
Renumber: subsequent section

7086f/C:JEANNE\WP:jj

AND AS AMENDED
BE CONCURRED IN

3-27

Senator Mazurek

HOUSE BILL NO. 748

INTRODUCED BY RAMIREZ, THAYER, D. BROWN, HALLIGAN, SPAETH, NEUMAN, MAZUREK, HOLLIDAY, GRADY, WINSLOW, QUILICI, KEATING, MARKS

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW A CORPORATION OR ASSOCIATION IN ITS ARTICLES OF INCORPORATION TO ELIMINATE OR LIMIT A DIRECTOR'S PERSONAL LIABILITY TO THE CORPORATION, ASSOCIATION, OR ~~ITS~~ SHAREHOLDERS OF THE CORPORATION OR MEMBERS OF THE ASSOCIATION FOR MONETARY DAMAGES FOR BREACH OF FIDUCIARY DUTY AS A DIRECTOR; AMENDING ~~SECTION~~ SECTIONS 35-1-202, 35-2-202, 35-15-201, 35-16-202, 35-17-202, 35-18-203, AND 35-20-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-1-202, MCA, is amended to read:

"35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized, which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter;

(d) the aggregate number of shares which the corporation shall have authority to issue and, if such shares are to be divided into classes, the number of shares of each class;

(e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional shares of the corporation;

(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(i) the number of directors constituting the initial

board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

(j) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(a) the direction of the management of the business and the regulation of the affairs of the corporation;

(b) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(c) the par value of any authorized shares or class of shares;

(d) any provision that, under this chapter, is required or permitted to be set forth in the bylaws;

(e) the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:

(i) for a breach of a director's duty of loyalty to a corporation or its shareholders;

(ii) for acts or omissions that constitute willful

misconduct, recklessness, or a knowing violation of law;

(iii) under 35-1-409; or

(iv) for a transaction from which a director derives an improper personal benefit. A provision under this subsection may not eliminate or limit the liability of a director for an act or omission occurring before the effective date of the provision. For purposes of this subsection, "director" includes a member of a governing body of a corporation that is not authorized to issue capital stock.

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter."

SECTION 2. SECTION 35-2-202, MCA, IS AMENDED TO READ:

"35-2-202. Articles of incorporation -- control over bylaws. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, including street and number, if any,

of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(g) the name and address of each incorporator.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

~~(3)~~(4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

SECTION 3. SECTION 35-15-201, MCA, IS AMENDED TO READ:

"35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the

purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~(3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20."

SECTION 4. SECTION 35-16-202, MCA, IS AMENDED TO READ:

"35-16-202. Petition for incorporation -- contents and filing -- bond. (1) Such persons must prepare, sign,

acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences

of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~(3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

~~(3)~~(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition."

SECTION 5. SECTION 35-17-202, MCA, IS AMENDED TO READ:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~(3) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

SECTION 6. SECTION 35-18-203, MCA, IS AMENDED TO READ:

"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~(3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

~~(3)~~(4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

SECTION 7. SECTION 35-20-103, MCA, IS AMENDED TO READ:

"35-20-103. Document of incorporation -- contents -- filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

(a) the names of the associates who attended such meeting;

(b) the corporate name of the association determined upon by a majority of the persons who met;

(c) the number of persons fixed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~(3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was

held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge."

NEW SECTION. Section 8. Effective date. This act is effective on passage and approval.

-End-

JUDICIARY COMMITTEE

50TH LEGISLATIVE SESSION

1987

Committee Members	District
Rep. Earl Lory, Chairman	59
Rep. John Mercer, Vice Chairman	50
Rep. Kelly Addy	94
Rep. Dave Brown	72
Rep. Tom Bulger	37
Rep. John Cobb	42
Rep. Fritz Daily	69
Rep. Paula Darko.	2
Rep. Ralph Eudaily	60
Rep. Leo Giacometto	24
Rep. Bud Gould	61
Rep. Ed Grady	47
Rep. Tom Hannah	86
Rep. Vernon Keller	83
Rep. Al Meyers	53
Rep. Joan Miles	45
Rep. Paul Rapp-Svrcek	51
Rep. Bill Strizich	41

Secretary

Renee Podell

Staff

John McMaster

CS-32
1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURR IN AS AMENDE DATE
740		2/19/87	2/19/87			2/19/87					
737		2/19/87	2/19/87	2/19/87							
748		2/19/87	2/23/87	2/23/87							
754		2/19/87	tabled 2/23/87	lifted 2/23/87							
757		2/19/87	2/23/87	tabled							
758		2/19/87	2/23/87	tabled							
761		2/19/87		2/21/87							
790		2/20/87				2/21/87					
800		2/20/87				2/20/87					
805		2/20/87				2/20/87					
824		2/20/87	2/20/87	tabled							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

statute in HB 632 was adopted in the 1950's and has worked well since that time. He stated that this bill serves a useful public policy function and the only problem with the statute is that is was construed by the Supreme Court as a requirement that you have to prove that the tortfeasor injury was a matter of general business practice as opposed to just one injury.

HOUSE BILL NO. 737, Rep. Dave Brown, District No. 72, sponsor, stated that this is an act to allow a professional person in charge of a patient at the Montana State Hospital to file a petition for an extension of involuntary commitment in the District Court of the County in which the patient is detained. Presently, he said, the law is silent as to which county actually has jurisdiction.

PROPONENTS:

KURT CHISOLM, Deputy Director of the Department of Institutions, pointed out that this is a housekeeping measure to clarify the law and the bill was submitted by their request.

STEVE WALDRON, Helena, went on record in support of this legislation.

There were no OPPONENTS and no questions.

Rep. Brown closed the hearing on HB 737.

HOUSE BILL NO. 748, Rep. Ramirez, District No. 87, explained that this act allows a corporation to limit personal liability of the directors, or its shareholders for monetary damages for breach of fiduciary duty as a director.

PROPONENTS:

ELWOOD ENGLISH, Secretary of State Office, presented testimony as (Exhibit A).

JIM ROBISCHON, Montana Liability Coalition, appeared in support of this legislation because it does not diminish a shareholder right against the officers of a corporation for breach of fudiciary duty and that right remains completely intact. It eliminates or perhaps reduces external pressures upon a director that may be a factor in the increasing number of these types of law suits.

JOHN ALLEN, Great Falls Gas Company, stated that cost of providing directors with liability insurance was costing approximately $1400.00 a year and upon renewal last summer the cost had increased to $36,900.00 per year. Since last summer the directors of the company have been without

liability insurance. He pointed out that it is very important that some legislative solution is found and this bill's language is permissive which allows corporations to adopt this article.

TIM GILL, Montana Livestock Ag Credit, Inc., stated that their record is clean for the last 53 years but now they are perceived as a risk and consequently, their directors place their personal assets at risk on a daily basis for the sake of promoting continuing Agricultural production in Montana. He submitted written testimony. (Exhibit B).

GEORGE BENNETT, Montana Bankers Association, submitted an article titled, "Bank Director's Report" dated February, 1987. (Exhibit C).

JO BRUNNER, Montana Water Development Association, submitted written testimony as (Exhibit D).

CHIP ERDMANN, Montana League of Savings Institutions, went on record in support of this bill.

STUART DOGGETT, Montana Chamber of Commerce, Helena, supported this bill.

GEORGE ALLEN, Montana Retail Association, supported HB 748.

See Visitors' Register for further proponents.

There were no opponents and no questions.

Rep. Ramirez closed the hearing on HB 748 by stating that this bill is based on Pennsylvania law and it does not give immunity to the officers. He pointed out that this is not an absolute limitation, it is a clarification and requires the shareholders to agree to the articles.

HOUSE BILL NO. 740, Rep. Cobb, District No. 42, pointed out that this act will relieve justices of the peace from overly burdensome bookkeeping and other administrative duties in regard to fines, penalties, and forfeitures paid in their courts and revises the method of distributing the fines, penalties, and forfeitures.

PROPONENTS:

JIM HAYNES, Montana Magistrate's Associations, Lobbyist, submitted written testimony. (Exhibit A). He also presented the Uniform Accounting System Manual for Justice Courts. (Exhibit B).

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)			✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

LIMITATION ON DIRECTOR'S LIABILITY

BUSINESS AND NONPROFIT CORPORATIONS

HB748

A
2-19-87
#748

In recent years corporations have been facing more and more difficulty in recruiting outside directors because of the exposure to liability in lawsuits. Small business corporations (which predominate in Montana) and nonprofit corporations have been particularly hit hard by the proliferation of lawsuits and the increasing difficulty in obtaining directors' liability insurance.

Many small business corporations and almost all nonprofits depend on outside advice and judgment for policy decisions. Directors who voluntarily or for only small compensation offer their expertise are faced with lawsuits by disgruntled shareholders if decisions go bad.

Some courts around the country have developed standards like "sound business judgment" which make sense, but are often misapplied with the advantages of hindsight. For instance, a director may vote for a particular action expecting interest rates to continue to rise. As economic conditions change, the decision may turn out to lose money even though no one could forsee that result at the time it was made.

A jury, with the assistance of hindsight, may decide that the decision made by the director was not "sound business judgment." Rather than subject themselves to such second-guessing, most experts stick to their own ventures, depriving new companies of benefits of their experience which they might otherwise be willing to share.

Delaware has long been in the forefront of those states attempting to establish a reputation for hospitality to business. Consequently Delaware has become the state of incorporation for thousands of American corporations, large and small, and has reaped benefits, both direct and indirect, from the process.

A comparison made by the University of Montana Law School shows very little difference between the advantages offered by Delaware and those we offer in Montana. Recently Delaware has responded to the directors' liability problem with legislation from which HB748 is taken.

It should be noted that directors are <u>not</u> offered <u>absolute</u> protection. First the protection offered is left to the stockholders to adopt (if they are sufferring from the inability to attract needed directors) or not (if they are not). Second, the protection is only against lawsuits <u>by the corporation or its shareholders</u>, not other members of the public who did not voluntarily surrender their rights and who may have valid claims against a director.

Third, directors are not immune if they (1) breach a duty of loyalty, (2) engage in willful misconduct, recklessness, or knowing violation of law, (3) violates 35-1-409 (allows distribution contrary to law or articles of incorporation), or (4) derives an improper personal benefit. The important point is that directors would be immune from suit, if the corporation adopts the provision, for simply making an honest mistake in business judgment.

Bank Director's Report

Volume 18, Number 8 February 1987

C
2-19-87
HB # 748

Remedies for the D&O Insurance Crisis

One third of more than 1,100 directors of major U.S. corporations say that the increased liability to which they are exposed has caused them to consider resigning from their board positions, according to a survey by Touche Ross. Of the directors polled, 93 percent believed that increased liability will make it more difficult to recruit talented, experienced people to serve on boards.

Higher Cost for Less Coverage. "Today, even big companies with no past history of shareholder suits have found their D&O liability insurance costs multiply tenfold in some cases for a fraction of the coverage in terms of dollar amounts," explains Robert Profusek, a Dallas-based partner in the law firm of Jones, Day, Reavis & Pogue. "Policies—when banks and companies can get them—include all sorts of exclusions, such as securities law liability and takeover defenses," says Profusek.

Crisis Remedies. Profusek offers some alternatives now being explored by board members:

☐ *Captive insurance companies.* These companies are formed by companies or banks in a similar industry. Thirty or 40 banks, for example, would own the company and have control of it. The concept is something like that of a cooperative. The owners would run the captive insurance company for the benefit of protecting the shareholders.

☐ *Reinsurance.* Here, an insurance company shares the risks with other companies, often creating layers of companies that are carrying the risk. This approach is often used with captive insurance companies.

☐ *Trusts.* Cash and other assets are put into trusts to fund director and officer defense costs.

☐ *Charter provisions.* Some companies have changed the standard of liability in their charters to restrict the liability of directors and officers. Delaware was the first state to permit companies to restrict liability in their charters. Indiana and Ohio have also done so.

Also in This Issue:

- Predictions for the Future of Banking 2
- LEGAL REPORT 3, 4
- Legal Plans: An Added Dimension to Banking Products and Services 5
- "A Silver Parachute" That Protects Employees in Case of Hostile Takeovers ... 6

Combat Pay. Many directors have received double-digit pay hikes this year, according to The Conference Board's annual directors' compensation survey. "The . . . pay gains . . . might be viewed as combat pay for directors who have survived takeover battles and other traumatic events," says Jeremy Bacon, The Conference Board's specialist in directorship practices. "Corporate managements are very much aware that their directors are shouldering increased responsibility in a risky environment," Bacon notes.

Forty-one of the 928 companies surveyed by The Conference Board gave their outside directors pay increases in 1986. Median annual pay climbed 15 percent among financial companies. Directors had received only modest increases the previous year.

Some 88 percent of the companies provide directors' liability insurance, up from 85 percent last year. But there have been widespread declines in the dollar lim-

WARREN, GORHAM & LAMONT, INC. WG&L

The Professional's Publisher

of coverage protecting board members against personal loss.

More Benefits. To both reward and retain good board members, the new study shows that companies increased not only cash compensation but also fringe benefits:

- Median annual retainers paid for board service climbed $1,000 last year in manufacturing, $1,600 in finance, and $1,500 in nonfinancial companies. For the largest firms, these annual retainers now stand at $20,000 in manufacturing, $18,000 in nonfinancial service firms, and $13,500 in financial enterprises.
- Directors' fees for attending meetings are also rising. Among manufacturing firms this median fee now amounts to $750.
- Some 56 percent of the companies allow their outside directors to defer their compensation, up from 53 percent last year. Excluding liability insurance, deferred compensation plans have become the most popular directors' benefit.
- Eighteen percent of the companies provide pension benefits for their outside directors, up from 15 percent in 1985. These plans are most popular among the larger companies.

Legislative Changes Urged. Although banks and companies are increasing pay and benefits and attempting new methods to reduce liability risk, Profusek says those steps are not enough. "Concerned banks and corporations should consider becoming actively involved in the legislative efforts in this area. . . . In the absence of some judicial clarification or some real breakthrough in legislation . . . this is a problem that could become permanent.

"Outside directors are supposed to remove a substantial part of self-interest from the corporate decision-making process. We could lose much of the benefit of having a board of directors made up of a cross section of the business community, such as a bank president, the CEO of another public company, or a distinguished business professor. They bring new ideas and enthusiasm to the boardroom."

Predictions for the Future of Banking

presentation titled "The Shape of the Future: banking in 1991," the MAC Group made a number of predictions about retail and commercial banking at the American Bankers Association (ABA) conference in San Francisco. The predictions were the result of a year-long research project conducted by the international management consulting firm.

According to William T. Gregor, a senior vice president of the MAC Group and a co-director of the study, the changes will be different from many industry analysts' expectations. "Ever since deregulation, making predictions has been a favorite pastime of industry watchers," he commented. "We've found that many of the common predictions—such as the rise of financial supermarkets, a dramatic decline in the number of banks, and the 'checkless' society—have simply not occurred."

New Directions. The MAC Group's research has identified key trends that the financial services world can expect to see over the next five years:

☐ *Customer buying behavior will continue to change* as consumers become more price-sensitive. Product-focused, as well as relationship-focused, strategies can work, but most banks will need to choose one or the other.

☐ *Distribution networks will change* dramatically as banks begin to grapple with the large expense of the traditional branch system. The number of full-service branches will decrease by more than a third, as banks close unprofitable ones and reconfigure using alternative delivery systems. However, the banks will be making larger acquisitions, which will increase the number of branches per bank.

☐ *Technology for consumer banking will focus on internal applications*, instead of interactive ones, and will become more "invisible." Corporate technology will, however, become more pronounced through the rise of transaction-oriented workstations for clients.

☐ *The size of banks will change dramatically*, but the total number will not. The number of midsize

(continued on page 5)

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MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 23, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 23, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Brown who was absent.

ACTION ON HOUSE BILL NO. 748: Rep. Giacometto move DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 748 DO PASS.

ACTION ON HOUSE BILL NO. 754: Rep. Giacometto opened discussion but stated he was opposed to the bill. Rep. Addy said he was not there for the hearing on the bill but had heard about the bill and it seemed to be an unusual procedure or an unorthodox way of going about checking the results of a court, but this was a unique court. He felt this was a step in the right direction. Rep. Rapp-Svrcek pointed out that HB 754 was one of the most important bills the committee would consider this session and it must be seriously looked at. He stated it was extremely important that the bill be passed as it was written. Rep. Keller said he did not have any problems with the first part of the bill but he sees that most people are worried about the last part of it. Rep. Mercer said the constitution requires that the legislature set up some kind of procedure for checking into the water rights and this puts the burden on legislators to set up the water rights court. In 1981, the water right court was set up. He felt that the whole system was messed up and he did not see how the bill would solve anything. His biggest concern was the separation of powers since this was not an administrative water court by a judicial branch water court. He stated that this would be a serious violation of the separation of powers to do a secret audit of court opinions. Rep. Rapp-Svrcek did not see that there was a separation of powers and stated that there was no secret audit. The bill presents a way of knowing if the process was working or not. Rep. Cobb said that some of the areas have never had water rights adjudicated. Rep. Lory asked Rep. Mercer what the results would be of an audit if it was found that something was messed up.

Rep. Mercer stated he had no idea how this would be resolved but said that judicial decrees would eventually be quite messed up and he just did not know how it would be undone.

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 23, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

CS-30

STANDING COMMITTEE REPORT

FEBRUARY 23, 19 37

Mr. Speaker: We, the committee on JUDICIARY

report HOUSE BILL NO. 748

XX ☐ do pass
☐ do not pass

☐ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Chairman

FIRST reading copy (WHITE color)

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0720	3/04	3/25		CONCUR		3/25
SPAETH, GARY			ADOPT MODEL CLOSE CORPORATION ACT			
HB0737	3/02	3/26		CONCUR		3/26
BROWN, DAVE			PETITION FOR EXTENSION OF COMMITMENT IN COURT WHERE FACILITY IS LOCATED			
HB0740	3/02	3/26		CONCUR AS AMENDED		3/27
COBB, JOHN			ACCOUNTING FOR AND DISTRIBUTING FINES, ETC. IN JUSTICE COURTS			
HB0748	3/02	3/25		CONCUR AS AMENDED		3/26
RAMIREZ, JACK			ALLOW CORPORATIONS TO LIMIT DIRECTORS' LIABILITY			
HB0754	4/03	4/08		CONCUR AS AMENDED		4/9
BRADLEY, DOROTHY			PROVIDES APPOINTMENT PROCESS FOR WATER JUDGES & ESTABLISHES PRIORITY BASINS			
HB0761	3/02	3/26		TABLED	Tabled 3/27	—
THOFT, BOB			ALTERNATIVE METHOD OF FURNISHING BAIL SET AT $1,000 OR LESS			
HB0790	3/02	3/19		TABLED		3/27
REHBERG, DENNIS			COSTS AND ATTORNEY FEES OF SMALL BUSINESS PAID BY STATE IN CERTAIN ACTIONS			
HB0800	3/02	3/13		ADVERSE REPORT		3/13
RAPP-SVRCEK, PAUL			ALLOW DISCHARGE OF SUPPORT DELINQUENCIES IN CERTAIN INCOME WITHHOLDING CASES			
HB0805	3/02	3/17		TABLED	Tabled 3/17	—
ROTH, RANDE			SUSPEND REGISTRATION AND PLATES FOR NONPAYMENT OF VEHICLE LIABILITY			
HB0861	4/03	4/07		CONCUR AS AMENDED		4/9
NATHE, DENNIS			DISCLOSURE OF INFORMATION ON TRANSFER OF RAILROAD LINE			
HB0873	4/02	4/07				

MONTANA STATE SENATE

JUDICIARY COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS: Senator Joe Mazurek, Chairman
Senator Bruce Crippen, V. Chairman
Senator Tom Beck
Senator Al Bishop
Senator Chet Blaylock
Senator Bob Brown
Senator Jack Galt
Senator Mike Halligan
Senator Dick Pinsoneault
Senator Bill Yellowtail

STAFF ATTORNEY: Valencia Lane

COMMITTEE SECRETARY: Mary Huber

BOOK: 1 of 4

INCLUSIVE DATES: January 6 - January 30, 1987

"corporate veil" will not be pierced for not meeting annually. He said this bill will stop that from happening.

Representative Spaeth closed by thanking the law students for their work.

CONSIDERATION OF HOUSE BILL 748: Rep. Jack Ramirez, Billings, opened the hearing on HB 748, which allows a corporation to amend its articles of incorporation to eliminate or limit a director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director. He said different associations can't get directors to serve on corporation boards because of the liability problem. He said page 3 has the exceptions for the limited liability. He stated the bill will not affect director's liability outside the corporation.

PROPONENTS: Elwood English, representing the Secretary of State, supported the bill. (Exhibit 2)

Jim Robischon, Montana Liability Coalition, stated the bill doesn't diminish the shareholder's right against the officers of the corporation. He felt it will eliminate some pressure on directors, which may be a factor in these kinds of lawsuits.

George Bennett, Montana Bankers Association, said the bill will only affect state chartered banks. He stated the bill just affects the relationship between the banking corporation and the shareholders and the directors. (See witness sheet)

John Allen, Great Falls Gas Company, testified in support of the bill. (Exhibit 3)

John Hoyt, representing himself, supported the bill.

Joe Brunner, Montana Water Development Association, supported House Bill 748.

OPPONENTS: There were no opponents.

DISCUSSION OF HOUSE BILL 748: Senator Bishop inquired if there is a case example of this kind of lawsuit in Montana. Mr. English replied there has been none in Montana, but there have been several in Delaware. He said the nonprofit groups are the ones that really need this protection. He said if investors put money into stock and the market goes down, the shareholders might sue the broker or the business they invested into.

Rep. Ramirez distributed amendments for the bill. (Exhibit 4)

Senator Mazurek asked if the amendments go through other corporation sections and reference the changes made here. Rep. Ramirez said Rep. Bardanouve asked for these amendments because he was worried about private corporations being sued.

Senator Beck questioned why federal banks could not be in this bill. Mr. Bennett responded that the bill will affect the corporate charter, which is filed with the Secretary of State, for a state bank. He said we cannot mess with federal law.

Representative Ramirez closed the hearing on HB 748.

CONSIDERATION OF HOUSE BILL 567: Rep. Ramirez of Billings introduced the bill. He said HB 567 will amend the law relating to civil lawsuits as to the treatment of collateral source payments in such suits. He gave the committee two examples of cases in front of the jury. He stated a man in case #1 is injured by a power line and loses his arm. He stated he has no medical expenses paid for and no workmen's compensation or benefits which will help him. He explained in case #2, the man has the same accident but has everything paid for. He said case #2 is tried with the jury and the jury doesn't know all of the medical expenses are paid for. Rep. Ramirez said that is the "collateral source rule". He felt the rule was not fair that the jury can't obtain collateral information on a claimant. He said his bill would abolish this rule. He said society can't afford people to get "double recovery" from a suit because of this rule. He explained if the insurance company pays the expenses the second time around because of a law suit, the claimant's expenses for an injury were already paid for, the people end up paying higher premiums. He said the bill will allow a judge to see the claimant's financial record on the injury when making his decision. He pointed out the House amended into the bill that the judge has the right to know if the claimant has insurance. He felt the part of HB 567 which deals with plaintiff's and claimant's current and expected future litigation costs and attorney fees had nothing to do with this bill and would like it stricken.

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Fedorko	Missoula Chamber of Commerce	474		X
Elwood English	Secretary of State	437 748	X	
Jim Regan		567		X
[illegible] Murdo	State Bar Business Law Section	HB 720	X	
Bob Correa	Bzn. Chamber	567-720	X	
Ray Foster	Bzn Chamber Gov. Council on Ec. Develop.	567	X	
John C Hoyt	Hoyt & Bleamaster	567		X
Fedorko	Missoula Chamber of Commerce	567/720/748	X	
[illegible] Engels	Mt Chamber of Commerce	720	X	
[illegible] Allen	Great Falls Bus Co	748	X	
[illegible] Allen	Mt. Retail Assn	748	✓	
[illegible] Harris	Self			
[illegible] Bauman	Mufg	748	✓	
Pauline Gerrell	AIA	567	amdts	X
"	"	474		X
Gail McGlenn	Independent Ins. Agents Assoc. of MT	567	Amend	
J. Dorey	Montana Dairymens Association Applied Management Corp.	720 748	X	
[illegible] Ins	Mt. Medical Assn	HB 567	X	
[illegible] Ins	Mt. Medical Assn	HB 748	X	
J. Neely	"	HB 567	X	
[illegible] Story	State Farm + NATI	567	X amend	
[illegible] Quist	Mt Farm Bureau - Woodbuskin	HB 720	✓	
Kay Gaffa	" "	720	X	
Susan C Bahls	U of M Law School	720	X	

(Please leave prepared statement with Secretary)

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date May

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		
	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 2
DATE March 25 1987
BILL NO. HB 748

TESTIMONY FROM
THE OFFICE OF
THE SECRETARY OF STATE

HB748

EFFORT MADE TO PROTECT DIRECTORS
FROM CORPORATE LIABILITY

In recent years corporations have been facing more and more difficulty in recruiting outside directors because of the exposure to liability in lawsuits. Small business corporations (which predominate in Montana) and nonprofit corporations have been particularly hit hard by the proliferation of lawsuits and the increasing difficulty in obtaining directors' liability insurance.

Many small business corporations and almost all nonprofits depend on outside advice and judgment for policy decisions. Directors who voluntarily, or for only small compensation, offer their expertise are faced with lawsuits by disgruntled shareholders or members if decisions go bad.

Some courts around the country have developed standards like "sound business judgment" which make sense, but are often misapplied with the advantages of hindsight. For instance, a director may vote for a particular action expecting interest rates to continue to rise. As economic conditions change, the decision may turn out to lose money even though no one could foresee that result at the time it was made.

A jury, with the assistance of hindsight, may decide that the decision made by the director was not "sound business judgment." Rather than subject themselves to such second-guessing, most experts stick to their own ventures, depriving new companies of the benefit of their experience which they might otherwise be willing to share.

As part of an effort to encourage small business to flourish in Montana, Representative Jack Ramirez sponsored House Bill 748 at the request of the Secretary of State. House Bill 748 allows shareholders to adopt articles of incorporation or amend existing articles to grant immunity from suit by the shareholders or corporation to directors under all but a few excepted circumstances. The grant of immunity is not effective by operation of law, but must be affirmatively adopted by the shareholders or members.

It should be noted that directors are <u>not</u> offered <u>absolute</u> protection. First the protection offered is left to the stockholders to adopt (if they are suffering from the inability to attract needed directors) or not (if they are not). Second, the protection is only against lawsuits <u>by the corporation</u> or <u>its shareholders</u>, not other members of the public who did not <u>voluntarily</u> surrender their rights and who may have valid claims

against a director.

Third, directors are not immune if they (1) breach a duty of loyalty, (2) engage in willful misconduct, recklessness, or knowing violation of law, (3) violate 35-1-409, MCA, (allow a distribution contrary to law or articles of incorporation), or (4) derive an improper personal benefit. The important point is that directors would be immune from suit, if the corporation adopts the provision, for simply making an honest mistake in business judgment.

Please note in 35-1-207, articles of incorporation may be amended only by a vote of the shareholders unless (1) no shares have been issued, or (2) an amendment is solely to change the number of authorized shares.

Consequently the HB 748 provision could not take effect without shareholder approval. If it were adopted before shares were issued, a potential shareholder could decline to purchase because of the objectionable provision in the articles.

A minority shareholder who loses the vote on whether to adopt the provision would presumably have time to get out of the corporation before an event arose which would limit that shareholder's rights.

In essence, the general corporate law of Montana prevents the HB 748 provision from being adopted against the will of the shareholders.

Delaware has long been in the forefront of those states attempting to establish a reputation for hospitality to business. Consequently Delaware has become the state of incorporation for thousands of American corporations, large and small, and has reaped benefits, both direct and indirect, from the process.

A comparison made by the University of Montana Law School shows very little difference between the advantages offered by Delaware and those we offer in Montana. Recently Delaware has responded to the directors' liability problem with legislation from which HB 748 is taken.

House Bill 748 would accomplish its purpose by adding the proposed provision to the list of acceptable contents in business corporation articles at 35-1-202, MCA.

Although the proposal is placed in a section applying to business ("profit") corporations, an amendment has been proposed to specifically include the liability immunity provision among those subjects which may be covered in articles of incorporation of nonprofit corporations and various types of associations as well.

It is the purpose of HB 748 to encourage new business formation and growth in Montana.

SENATE JUDICIARY
EXHIBIT NO. 2
DATE 3-25-87
BILL NO. H.B. 748

EXHIBIT NO. 3
DATE March 25 1987
BILL NO. HB 748

TESTIMONY OF JOHN C. ALLEN
ON BEHALF OF GREAT FALLS GAS COMPANY
HOUSE BILL 748
SENATE JUDICIARY COMMITTEE, ROOM 325
MARCH 24, 1987

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, TO GREAT FALLS GAS COMPANY, HOUSE BILL 748, IS ONE OF THE MOST IMPORTANT PIECES OF LEGISLATION BEING CONSIDERED BY THIS LEGISLATIVE SESSION.

THE BOARD OF DIRECTORS FOR GREAT FALLS GAS COMPANY CONTAINS SEVEN OUTSIDE DIRECTORS. THE EXPERTISE AND BUSINESS EXPERIENCE REPRESENTED BY THAT BOARD ARE INVALUABLE TO THE OPERATION OF OUR COMPANY. A CONDITION OF SERVICE BY THOSE DIRECTORS HAS ALWAYS BEEN THAT THEY HAVE ADEQUATE PROTECTION FROM PERSONAL LIABILITY ARISING OUT OF THEIR SERVICE ON THE BOARD. THIS PROTECTION WAS TRADITIONALLY PROVIDED BY CARRYING LIABILITY INSURANCE AT AN ANNUAL COST OF APPROXIMATELY $1,700.00. IN AUGUST OF 1986 THE COMPANY WAS NOTIFIED THAT THE EXISTING CARRIER WOULD NOT RENEW OUR POLICY IRRESPECTIVE OF THE FACT THAT OUR CLAIMS HISTORY WAS UNBLEMISHED. THE COMPANY SOLICITED BIDS TO REPLACE THIS COVERAGE AND RECEIVED ONLY ONE BID AT A PREMIUM COST OF OVER $36,000 PER YEAR. THE COVERAGE PROVIDED BY THIS BIDDER WAS NOT AS COMPREHENSIVE AS THE PREVIOUS PROVIDER. THE BOARD DETERMINED THAT IT SHOULD SEEK ANOTHER AVENUE TO INDEMNIFICATION FOR THIS EXPOSURE RATHER THAN PAYING THIS UNREASONABLY HIGH PREMIUM FOR THE REDUCED COVERAGE BEING OFFERED. AFTER CONSIDERABLE RESEARCH AND INVESTIGATION THE ONLY CERTAIN WAY OF PROVIDING THE NECESSARY PROTECTION TO DIRECTORS APPEARED TO BE A CHANGE IN MONTANA LAW WHICH WOULD ALLOW A CORPORATION TO LIMIT THIS EXPOSURE THROUGH ADOPTION OF A NEW ARTICLE OF INCORPORATION OR SOME SIMILAR DEVISE.

DURING THIS INVESTIGATION IT BECAME APPARENT THAT THIS PROBLEM WAS NOT UNIQUE TO GREAT FALLS GAS COMPANY. INDEED, NATIONWIDE INSURANCE FOR THIS INDEMNIFICATION HAS INCREASED AN ESTIMATED 506% SINCE 1985 THE CONSULTING FIRM OF HENDRICK & STRUGGLES INC. CONDUCTED A SURVEY OF CORPORATE DIRECTORS WHICH FOUND THAT 75% OF THOSE SURVEYED WOULD NOT SERVE ON A BOARD WITHOUT INSURANCE PROVIDING INDEMNIFICATION FROM PERSONAL LIABILITY. A SIMILAR SURVEY BY TOUCH ROSS FOUND THAT ONE THIRD OF THE DIRECTORS SURVEYED SAY THEY HAVE CONSIDERED RETIRING FROM THEIR BOARDS BECAUSE OF THE INCREASED LIABILITY TO WHICH THEY ARE EXPOSED. NINETY-THREE PERCENT OF THE DIRECTORS POLLED BELIEVE INCREASED LIABILITY EXPOSURE WILL MAKE IT MORE DIFFICULT TO RECRUIT TALENTED, EXPERIENCED PEOPLE TO SERVE ON BOARDS IN THE FUTURE.

IN RESPONSE TO THIS PROBLEM CERTAIN STATE LEGISLATURES ADOPTED STATUTES

SIMILAR TO HB 748 WHICH ALLOWED CORPORATIONS ALTERNATIVES TO INSURANCE. THESE OTHER STATES INCLUDE DELAWARE, SOUTH DAKOTA, INDIANA, KANSAS, LOUISIANA, MISSOURI, NEW YORK, VIRGINIA AND PENNSYLVANIA. HB 748 IS PATTERNED IN LARGE MEASURE AFTER THE LEGISLATION IN PENNSYLVANIA.

THE PROBLEM ADDRESSED BY HB 748 IS REAL. IN THE LAST QUARTERLY BOARD MEETING FOR OUR COMPANY A RESOLUTION WAS ADOPTED BY THE BOARD WHICH REQUIRES OUR COMPANY TO EXPEND THE $36,000 FOR DIRECTOR'S LIABILITY INSURANCE IF HB 748 DOES NOT PASS. PASSAGE OF HB 748 WILL SAVE GREAT FALLS GAS AND THE CUSTOMERS WHO ULTIMATELY BEAR THE COSTS FOR SUCH EXPENDITURES SIGNIFICANT AMOUNTS OF MONEY. PASSAGE WOULD UNDOUBTEDLY SAVE OTHER COMPANIES MONEY WHO ARE SIMILARLY SITUATED TO GREAT FALLS GAS COMPANY. PASSAGE WOULD ALSO SEND THE PROPER SIGNAL TO THE REST OF THE COUNTRY REGARDING THE BUSINESS CLIMATE IN MONTANA.

FINALLY, AN EXAMINATION OF THE CONTENTS OF HB 748 INDICATES THAT THE BILL IS CAREFUL TO PROTECT SHAREHOLDERS FROM INTENTIONAL OR IMPROPER CONDUCT BY THE DIRECTOR. THE ONLY LIMITATION ON LIABILITY PROVIDED FOR IN THIS BILL IS FAILURE BY THE DIRECTOR TO EXERCISE PRUDENT BUSINESS JUDGMENT. WITH RESPECT TO THAT MATTER SHAREHOLDERS HAVE THE RIGHT TO VOTE FOR BOTH THE CHANGE IN CORPORATE BYLAW AS WELL AS FOR THE DIRECTOR HIMSELF BEFORE THE INITIATION OF HIS TERM.

IN SUMMARY HB 748 WOULD SOLVE A SIGNIFICANT BUSINESS PROBLEM FOR GREAT FALLS GAS COMPANY; IT WOULD SAVE THE COMPANY AS WELL AS ITS CUSTOMERS SIGNIFICANT AMOUNTS OF MONEY; IT WOULD MAKE DOING BUSINESS IN MONTANA MORE ATTRACTIVE; IT WOULD RETAIN THE PROTECTION FOR SHAREHOLDERS AGAINST IMPROPER OR INTENTIONALLY WRONGFUL ACTION BY THE DIRECTOR.

FOR THE ABOVE STATED REASONS, GREAT FALLS GAS COMPANY STRONGLY URGES THE PASSAGE OF HB 748.

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3-25-87
BILL NO. H.B. 748

EXHIBIT NO. 4
DATE March 25 1997
BILL NO. HB 748

SPONSOR'S AMENDMENTS

TO HB748

1. Title, line 5.
Following: "CORPORATION"
Insert: "OR ASSOCIATION"

2. Title, line 7.
Following: "CORPORATION"
Insert: ", ASSOCIATION"

3. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "35-1-202,"
Insert: "35-2-202, 35-15-201, 35-16-202, 35-17-202, 35-18-203, and 35-20-103,"

4. Page 4, line 8.
Following: Section 1
Insert:

Section 2. Section 35-2-202, MCA, is amended to read:

35-2-202. Articles of incorporation — control over bylaws. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(g) the name and address of each incorporator.

(2) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

(3) ~~(2)~~ It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(4) ~~(3)~~ Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

Section 3. Section 35-15-201, MCA, is amended to read:

35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;
(b) its capital stock;
(c) its location;
(d) the duration of the association; and
(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required therein, the statement of incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

(3) ~~(2)~~ The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20.

Section 4. Section 35-16-202, MCA, is amended to read:

35-16-202. Petition for incorporation — contents and filing — bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;
(b) the purpose for which it is formed;
(c) the place where its principal business is to be transacted;
(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

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(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) In addition to provisions required therein, the petition for incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

(3) ~~(2)~~ Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(4) ~~(3)~~ A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition.

Section 5. Section 35-17-202, MCA, is amended to read:

35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required therein, the petition for incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

(3) ~~(2)~~ The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified copies thereof shall

SENATE JUDICIARY
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be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association.

Section 6. Section 35-18-203, MCA, is amended to read:

35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required therein, the petition for incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

~~(2)~~ (3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

~~(3)~~ (4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

Section 7. Section 35-20-103, MCA, is amended to read:

35-20-103. Document of incorporation — contents — filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

(a) the names of the associates who attended such meeting;

(b) the corporate name of the association determined upon by a majority of the persons who met;

(c) the number of persons fixed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) In addition to provisions required therein, the document of incorporation may also contain provisions not inconsistent with law regarding liability of directors as set forth in 35-1-202(2)(e).

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(3) ~~(2)~~ Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.

Renumber: Subsequent section.

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 3-25-87
BILL NO. H.B. 748

ACTION ON HB 761: A straw vote indicated the committee would not pass the bill. Senator Beck wanted to keep it alive for the sake of the small counties. No action was taken.

ACTION ON HB 503: Valencia Lane asked if the committee would like to amend the last sentence of the bill, so it will include touring or viewing of historical sites as suggested by the sponsor. Senator Blaylock asked what the difference was between "touring" and "viewing". Valencia said "touring" implies "passing through an area" while "viewing" is just looking. Senator Blaylock moved Dorthy Bradley's amendment:

> Page 1, line 16.
> Following: "hiking,"
> Insert: "touring or viewing cultural and historical sites and monuments,"

He also moved:

> 2. Page 1, lines 17 and 18.
> Following: "expeditions." on line 17.
> Strike: remainder of line 17 through line 18

The motion carried. Senator Blaylock moved the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 748: Senator Mazurek explained the Ramirez's amendments to the committee (see Exhibit 6). Senator Mazurek asked what Title 35, chapter 15 applies to. Valencia said it applies to cooperative associations. He said the bill only applies to the liability of the officers or directors to the corporation or the shareholders. He said the bill has nothing to do with third parties. Senator Pinsoneault said on page 3 there were exceptions that obligate corporations to stay within guidelines. Senator Halligan asked if these amendments were presented in the House at all. Senator Mazurek said Representative Bardanouve asked in the House why the bill only applies to private organizations and he wanted to know why the bill would not apply to REA and others like REA. Senator Mazurek said the amendments make the same provisions applicable to other corporations. Senator Halligan moved the amendments. The motion carried. Senator Blaylock moved the bill AS AMENDED BE CONCURRED IN. The motion carried.

ACTION ON HB 207: Valencia handed out amendments to the committee that they had asked her to prepare (see Exhibit 7). Senator Halligan moved the amendments. The motion carried. Senator Pinsoneault moved the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously.

ACTION ON HB 309: Valencia explained the amendments requested by the committee (see Exhibit 8). She said the third amendment is language from the Workmen's Comp. Act, which protects the privacy of people's

WITNESS STATEMENT

NAME GEORGE T. BENNETT BILL NO. [illegible]

ADDRESS 111 N. Main, P.O. Box 1705, Helena, MT 59624 DATE 3/2[illegible]

WHOM DO YOU REPRESENT? Montana Bankers Association

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The Montana Bankers Association supports HB-748 which will allow banking corporations organized in Montana to limit the liability of directors to the corporation and stockholders, in narrow circumstances, as described in the bill. The banking industry in Montana has been faced with a situation where a number of the major insurance carriers are refusing to offer directors and officers insurance, and this bill should help with this problem.

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date March 26

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman			X
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

STANDING COMMITTEE REPORT

March 27 19 87

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration HOUSE BILL No. 748

Third reading copy (blue color)

Allow Corporations to limit directors' liability.
Ramirez (Nagel)

Respectfully report as follows: That HOUSE BILL No. 748

1. Title, line 5.
Following: "CORPORATION"
Insert: "OR ASSOCIATION"

2. Title, line 7.
Following: "CORPORATION"
Insert: ", ASSOCIATION,"
Strike: "ITS"

3. Title, line 8.
Following: "SHAREHOLDERS"
Insert: "OF THE CORPORATION OR MEMBERS OF THE ASSOCIATION"

4. Title, line 9.
Strike: "SECTION"
Insert: "SECTIONS"
Following: "35-1-202,"
Insert: "35-2-202, 35-15-201, 35-16-202, 35-17-202, 35-18-203, AND 35-20-103,"

5. Page 4, line 3.
Following: line 7
Insert: "Section 2. Section 35-2-202, MCA, is amended to read:
"35-2-202. Articles of incorporation -- control over

CONCUR

CONCURRED CONTINUED

Senator Mazurek Chairman.

bylaws. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(g) the name and address of each incorporator.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

~~(3)~~ (4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling."

Section 3. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

CONTINUED

(d) the duration of the association; and

(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~ (3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20."

Section 4. Section 35-16-202, MCA, is amended to read: "35-16-202. Petition for incorporation -- contents and filing -- bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed;

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

CONTINUED

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~(3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

~~(3)~~(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition."

Section 5. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 12, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).

~~(2)~~(3) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified

CONTINUED

Senator Mazurek

copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

Section 6. Section 35-18-203, MCA, is amended to read:
"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:
(a) the name of the cooperative;
(b) the address of its principal office;
(c) the names and addresses of the incorporators;
(d) the names and addresses of the persons who shall constitute its first board of trustees; and
(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.
(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(e).
~~(2)~~(3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.
~~(3)~~(4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 7. Section 35-20-103, MCA, is amended to read:
"35-20-103. Document of incorporation -- contents -- filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:
(a) the names of the associates who attended such meeting;
(b) the corporate name of the association determined upon by a majority of the persons who met;
(c) the number of persons fixed upon to manage the concerns of the association;
(d) the names of the trustees chosen at the meeting and their classification;

CONTINUED

Senator Mazurek

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-702(2)(e).

~~(2)~~(3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge."

Renumber: subsequent section

7036C/C:JEANNE\MP:jj

AND AS AMENDED
BE CONCURRED IN

Senator Yeomans